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9 TENNIS WICK, TYRA HARRINGTON,
MARK FRANCESCHI, TODD HOFFMAN,
JESSE CABLK and ANDREW SMITH

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

13 RONALD CUPP, an individual

14 Plaintiff,

15 vs.

16 **Case No. 4:23-cv-01007**
DEFENDANTS' REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS COMPLAINT

17 COUNTY OF SONOMA, a municipal
corporation; TENNIS WICK, in his
18 individual and official capacities;
TYRA HARRINGTON, in her
individual and official capacities;
19 MARK FRANCESCHI, in his
individual and official capacities;
TODD HOFFMAN, in his individual
and official capacities; JESSE
20 CABLK, in his individual and official
capacities; ANDREW SMITH, in his
individual and official capacities
21 DOES 1-50, inclusive

Date: 08/17/2023
Time: 2:00 p.m.
Courtroom: 6, 2nd Floor
Judge: Jon S. Tigar

22 Defendants.

23 /

24 **I. Alleged §1983 Violations Are Discrete Acts, Not Continuing Violations**

25 The attempt in the Opposition to characterize the alleged events as somehow
26 "continuing" in nature, directly contradicts the alleged facts and the actual events.

1 Plaintiff Ronald Cupp became the owner of 4640 Arlington Avenue, Santa Rosa,
 2 California sometime in 2019 and recorded a deed on February 25, 2019. (See Exhibit No.
 3 11, Supplemental Request for Judicial Notice filed herewith). Ronald Cupp is the only
 4 plaintiff in this case. He alleges specific conduct of some of the Defendants on specific
 5 dates which supposedly amount to violations of his civil rights.

6 Plaintiff cites the case of *Nichols v. City of Palm Springs*, 2014 U.S. Dist. LEXIS
 7 197732 (C.D. CA 2014), in his Opposition for some general principles, but ignores the
 8 ruling of the District Court on the issue of the statute of limitations. The Court clearly
 9 stated that the events that took place more than two years before the filing of the
 10 Complaint were not actionable. *Nichols*, 2014 U.S. Dist. LEXIS 197732 *10. The Court
 11 cited twice the case of *Ward v. Caulk*, 650 F.2d 1144, 1147 (9th Circuit 1981) for the
 12 proposition that "[a] continuing violation is occasioned by continuing unlawful acts, *not*
 13 *by continual ill effects from an original violation.*" (Emphasis added) The Ninth Circuit in
 14 *Ward v. Caulk* also held that plaintiff's statutory claims were barred by the limitation
 15 period for filing the actions.

16 While the Court in *Nichols* 2014 U.S. Dist. LEXIS 197732, did not decide all the
 17 limitations of action issues on the motion to dismiss, it was relying upon the alleged
 18 theory of "state created danger" since the plaintiffs were police informants for a lengthy
 19 period of time. The District Court subsequently did grant summary judgment for all
 20 individual defendants. *Nichols v. City of Palm Springs*, 2015 U.S. Dist. LEXIS 190457
 21 (C.D. CA 2015).

22 It should also be noted that the District Court in *Nichols*, 2014 U.S. Dist LEXIS
 23 197732, dismissed the *Monell* claim against the City with leave to amend. Apparently the
 24 Plaintiff in *Nichols* knew that there was no actual policy implicated and did not amend
 25 the *Monell* claim.

26 Plaintiff discusses another case to support the concept of a "continuing violations"
 27 exception to the statute of limitations defense; *Rodriguez v. City of Los Angeles*, 2015
 28 U.S. Dist. LEXIS 190012 (C.D. Cal. 2015) *Rodriguez* is clearly different than the present

1 case since it involved claims regarding the service of a gang injunction at different times
 2 on different plaintiffs and members of a “class” recognized by the Court. The issuance of
 3 the gang injunctions was not contested, only the service. There was no administrative
 4 hearing providing due process such as the one involving Mr. Cupp, nor was there a prior
 5 lawsuit (*Cupp v. Smith*, Case No. 4:20-cv-03456), raising many of the same claims in the
 6 same U.S. District as are raised in this case.

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8 **II. The Only Systematic Practice Raised in the Complaint is Enforcement**
9 of County Code Against Plaintiff Cupp for His Repeated Code
10 Violations

11 While a great many conclusory allegations are raised in the Complaint, and
 Plaintiff attaches some statements from his fellow code violators, the conduct alleged in
 12 the Complaint clearly shows the step-by-step attempts by the County to obtain
 13 cooperation from Ronald Cupp to remedy the unpermitted building and zoning code
 14 violations at 4640 Arlington Ave. Instead of engaging in collaborative efforts to remedy
 15 the violations, as requested in the original Notice & Orders (Doc #1-1, pp. 22-23 of 89),
 16 Plaintiff has chosen to deny the existence of the code violations, to ignore the subsequent
 17 notices (Doc #1, ¶¶37-38, pp. 13-14), to continue to expand the scope of his unpermitted
 18 use of the property, to contest the violations in the abatement hearing, and to ignore the
 19 Decision of the Administrative Hearing Officer for months after it was issued. (Doc #13,
 20 pp. 13-27)

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22 **III. Damages Not Recoverable for California Constitutional Violations**

23 Plaintiff’s own authority does not require any detailed analysis by Defendant to
 raise the lack of damages for a due process claim under the California Constitution
 24 Article 1, §7. In Plaintiff’s case of *Rodriguez v. City of Los Angeles*, 2015 U.S. Dist.
 25 LEXIS 190012 (C.D. CA 2015), **68-69 held that Plaintiffs may not seek damages for
 26 California due process claims on the basis of service of the injunctions. “The California
 27 Supreme Court has ruled that there is no constitutional tort cause of action for damages to
 28 remedy a violation of due process under the California Constitution,” citing *Katzberg v.*

1 *Regents of Univ. of California*, 29 Cal. 4th 300, 326, (2002). The District Court also cited
 2 *Brahmana v. Henard*, 2011 U.S. Dist. LEXIS 153567 *8 (N.D. Cal. 2011)

3 These cases do not present a detailed analysis under *Katzberg*, yet they clearly
 4 hold that damages are not recoverable under various provisions of the California
 5 Constitution.

6 **IV. Plaintiff Ignores the Authority Previously Provided in Reply to
 7 Plaintiff's Opposition to County Motion to Dismiss**

8 As fully set out in the Reply Memorandum to Plaintiff's Opposition, Doc #18, pp.
 9 3-4, the *Younger* Abstention Doctrine applies to State administrative proceedings.

10 For a period of 18 months, Ronald Cupp made significant progress on abating
 11 conditions at 4640 Arlington Ave, then for some reason stopped further efforts. It is now
 12 apparent that a State court action will need to be filed to obtain enforcement of the code
 13 violations, completion of the work to abate the nuisance and violations, and for civil
 14 penalties, staff costs, and attorney's fees that are outstanding.

15 **V. Defendant Tennis Wick and Tyra Harrington Should Be Dismissed**

16 Plaintiff clarifies in his Opposition that Tennis Wick and Tyra Harrington are
 17 included in the Complaint only in their capacities as Director and Code Enforcement
 18 Manager for Permit Sonoma (aka PRMD). Doc #31, p. 9: 4-20; p. 11: 8-13. To the
 19 extent that they are named solely as "policy-makers", the allegations against them fail for
 20 the same reasons as the claim under *Monell* fails against the County of Sonoma. See Doc
 21 #12, pp. 15-16. "A plaintiff must allege facts, not simply conclusions, that show that an
 22 individual was personally involved in the deprivation of his [or her] civil rights." See
 23 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

24 **VI. Plaintiff Should Not Be Allowed to Continue to Waste the Court and
 25 Defendants' Time**

26 In his Opposition, Plaintiff several times alludes to having additional facts and
 27 "counts" not included in this Complaint filed on March 6, 2023. See Doc #31, p. 12: 13-
 28 18, p. 19: 15-23. He apparently now wants to add new parties to this Complaint and
 make other claims that were known to him, yet for some reason left out of the Complaint.

1 These tactics are clear examples of the reasons why this Court can and should exercise its
2 inherent power to dismiss this matter under the All Writs Act.

3 Dated: June 8, 2023

ROBERT H. PITTMAN, County Counsel

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By: /s/ Michael A. King

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Michael A. King
Attorneys for Defendant
COUNTY OF SONOMA

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